JAN CHRISTIAN SYKES

IBLA 81-343 Decided May 26, 1981

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting Indian allotment application N-26763.

Affirmed.

1. Classification and Multiple Use Act of 1964 -- Indian Allotments on Public Domain: Lands Subject to -- Public Records -- Segregation

Publication in the Federal Register of a classification for multiple use management pursuant to 43 CFR 2461.2 will segregate the affected lands to the extent indicated in the notice, and subsequent Indian allotment applications for such lands must be rejected.

APPEARANCES: Jan Christian Sykes, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Jan Christian Sykes, hereinafter appellant, appeals from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated January 29, 1981, which rejected appellant's application filed for an Indian allotment on public lands in Clark County, Nevada, pursuant to section 4, Act of February 8, 1887, as amended, 25 U.S.C. § 334 (1976). The appellant requested an allotment of "all of public domain within the following description", NW 1/4 sec. 29, T. 23 S., R. 59 E., Mount Diablo meridian. The application was received by the Nevada State Office on October 25, 1979, and designated by serial number N 26763. The BLM decision rejected appellant's application because the lands requested were within an area that had been classified for retention in Federal ownership and because the Notice of Classification was published in the Federal Register, 32 FR 130 (July 7, 1967). BLM explained that the classification segregated the lands from appropriation under the agricultural land laws, including the Act of February 8, 1887.

In his statement of reasons appellant raised the following issue pertinent to his appeal:

> Rojer [sic] Jarrell [sic] has shirked his duty to investigate each parcel of land upon which an Indian claim is established and to make a determination upon the contents fo[r] the U. S. Statutes at Large with reference to the claims. Rather, he merely cites self-serving regulations and and [sic] blanket withdrawals which are in fact illegal because they do not address themselves to any particular parcel of land but to all of the lands included in the withdrawals by blanket classifications and publication of the intent to do so in the Federal Register, since 1964. These classifications are illegal because the Federal Register Act does not and cannot apply to the protocals [sic] and treaties of the United States. The rights the Indians have to public domain are emboided [sic] and are a part of federal treaty agreements with the Indian tribes where benefits are noted where the United States confiscated other Indian lands and provided lands rights by treaty implementing statutes for the descendants of the tribes and to Indians whose tribes had no res [sic] reservations or treaties with the United Sates. [sic]

BLM rejected appellant's application because it found that the lands requested were within an area that had been classified for retention in Federal ownership. Item 10 of the application form, after asking the applicant to indicate whether there was a claim of bona fide settlement, states: "Public land withdrawn by Executive Order 6910 and 6964 of November 26, 1934, and February 5, 1935, respectively, is not subject to settlement under section 4 of the General Allotment Act of February 8, 1887, as amended until classified as suitable." 1/

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1/ "First general order of withdrawal. Subject to the conditions expressed in the Act of June 25, 1910, (36 Stat. 847), as amended by the Act of August 24, 1912 (37 Stat. 497; 43 U.S.C. 141-143, 16 U.S.C. 471), it is ordered that all of the vacant, unreserved and unappropriated public land in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, and Wyoming be, and it hereby is, temporarily withdrawn from settlement, location, sale or entry and reserved for classification, and pending determination of the most useful purpose to which such land may be put in consideration of the provisions of the Act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. 315-315n, 1171), and for conservation and development of natural resources.

"The withdrawal hereby affected is subject to existing valid rights. "This order shall continue in full force and effect unless and until revoked by the President or by act of Congress [Exec. Order No. 6910, Nov. 26, 1934]."

There is no information or credible evidence to show that the applicant has, in fact, physically settled upon the lands applied for, and particularly, that any alleged settlement was initiated prior to the first general order of withdrawal, Exec. Order No. 6910, November 26, 1934, supra. It is well established that no rights of Indians are violated by the withdrawal of public lands from settlement and the requirement that such lands be classified pursuant to section 7, Taylor Grazing Act, 43 U.S.C. § 315f (1976), before the public lands can be allotted to an Indian under section 4 of the General Allotment Act, supra. Pallin v. United States, 496 F.2d 27 (9th Cir. 1974); Hopkins v. United States, 414 F.2d 464 (9th Cir. 1969); Finch v. United States, 387 F.2d 13 (10th Cir. 1967), cert. denied, 390 U.S. 1012 (1968). Nor is there a violation of any rights of the Indian if an allotment application is denied where the land is not classified for allotment. Finch v. United States, supra.

Regulation 43 CFR 2530.0-3(c) provides that public land withdrawn by Exec. Order No. 6910, supra, and within a grazing district established under section 1 of the Taylor Grazing Act, 43 U.S.C. § 315 (1976), is not subject to settlement under section 4 of the General Allotment Act, supra, until such settlement has been authorized by classification. All public land in Clark County, Nevada, was placed in Nevada Grazing District No. 5, by Departmental order of November 3, 1936 (1 FR 1748 (Nov. 7, 1936)). 2/

The land described in appellant's application was classified for multiple use management, and the nature of the classification was published in 32 FR 9995-96 (July 7, 1967). The notice states:

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2/ "Order Establishing Grazing District No. 5 in the State of Nevada November 3, 1936.

"Under and pursuant to the provisions of the Act of June 28, 1934, 48 Stat. 1269, as amended by the Act of June 26, 1936, Public, No. 827, 74th Congress, and subject to the limitations and conditions therein contained, Nevada Grazing District No. 5 is hereby established, the exterior boundaries of which shall include the following-described lands:

Nevada
Mount Diablo Meridian

"All of Clark County exclusive of Dixie National Forest and Fort Mohave and Moapa River Indian Reservations.

"Rules and regulations for the administration of grazing districts issued by the Secretary of the Interior March 21, 1936, shall be effective as to the lands embraced within this district from and after the date of the publication of this order in the Federal Register.

W. C. Mendenhall,
Acting Secretary of the Interior."

> Notice of Classification of Public Lands for Multiple Use Management
> June 27, 1967.
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> 1. Pursuant to the Act of September 19, 1964 (43 U.S.C. 1411-13) and to the regulations in 43 CFR, Subparts 2410 and 2411, the public lands described in paragraph 3 below are hereby classified for multiple use management.
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> 2. Publication of this notice segregates (a) the public lands described in paragraph 3 from appropriation under the agricultural land laws (43 U.S.C. Chs. 7 and 9; 25 U.S.C., sec. 334) and from sale under section 2455 of the Revised Statutes (43 U.S.C. 1171) and the Public Land Act of September 19, 1964 (43 U.S.C. 1421-27), and (b) further segregates the public land described in paragraph 4 of this notice from operation of the general mining laws (30 U.S.C. 20). Except as provided in (a) and (b) above, the lands shall remain open to all other applicable forms of appropriation, including the mining and mineral leasing or material sale laws. As used herein, "public lands" means any lands withdrawn or reserved by Executive Order grazing district, established pursuant to the Act of June 28, 1934 (48 Stat. 1269), as amended, which are not otherwise withdrawn or reserved for a Federal use or purpose.

The description of the segregated lands includes the lands requested by appellant.

Section 4 of the Act of February 8, 1887, supra, authorizes the Secretary of the Interior to issue allotments to Indians, in certain instances, where the Indians have made settlement upon public lands "not otherwise appropriated." Pamela June Wood Finch, 49 IBLA 325 (1980); Thurman Banks, 22 IBLA 205 (1975). In the present case the lands were "appropriated."

[1] Publication in the Federal Register of a notice of classification pursuant to the Classification and Multiple Use Act of 1964, 43 U.S.C. §§ 1411-1413 (1976), and the regulations in 43 CFR Subparts 2410 and 2411, will segregate the affected land to the extent indicated in the notice. Wanda Lois Lee McKinney, 53 IBLA 279 (1981); Samual Lee Clifford, 53 IBLA 23 (1981); Robert Dale Marston, 51 IBLA 115 (1980); United States v. Rodgers, 32 IBLA 77 (1977). Publication in the Federal Register of a notice of a classification under the Classification and Multiple Use Act will segregate the lands described from other forms of disposal unless the classification provides specifically that the

lands shall remain open for certain forms of disposal. Wanda Lois Lee McKinney, supra; Samual Lee Gifford, supra; Robert Dale Marston, supra; H. E. Baldwin, 3 IBLA 71 (1971). The notice published July 7, 1967, segregated the lands described from disposal under the agricultural land laws, including 25 U.S.C. § 334 (1976). There is no evidence that appellant made "settlement" as required by the Act prior to the time that the land was no longer available for entry.

Nothing that the appellant has stated obviates the need to comply with the regulations implementing section 4 of the General Allotment Act.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward. W. Stuebing
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Douglas E. Henriques
Administrative Judge